82-2106

No. _____

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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

C. B. LAMPKIN, JR.

Petitioner,

vs.

NORTH AMERICAN FINANCE COMPANY

Respondent

Petition for a Writ of Certiorari to the

Supreme Court of Mississippi

No. 53,684

C. B. Lampkin, Jr. Pro Se
Petitioner
912 Chickasaw Road
Oxford, Mississippi 38655

ORAL ARGUMENT REQUESTED

QUESTIONS PRESENTED FOR REVIEW

A. Whether a Final Judgment of the Supreme Court of Mississippi violates the Contract Clause of the United States Constitution?

B. Whether a Final Judgment of the Supreme Court of Mississippi violates the property rights of the Fifth Amendment to the United States Constitution?

C. Whether a Final Judgment of the Supreme Court of Mississippi rendered in violation of prior decisions of said court, deprives Petitioner of his property without Due Process of Law guaranteed to him by the 14th Amendment to the United States Constitution?

D. Whether A Final Judgment of the Supreme Court of Mississippi rendered in violation of prior decisions of said Court, deprives Petitioner of the equal protection of the law guaranteed him by the 14th Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

C.B. Lampkin, Jr. Petitioner,

(Appellant and Defendant below)

North American Finance Co.

(Appellee and Plaintiff below)

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IN THE

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October Term, 1983

C.B. Lampkin, Jr.

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vs.

NORTH AMERICAN FINANCE COMPANY

Respondent

Petition for a Writ of Certiorari to the Supreme Court of Mississippi

PETITION

OPINIONS BELOW

The Decree of the Chancery Court of Lafayette County, Mississippi was rendered in favor of North American Finance Company, dated August 17, 1981, appears as Exhibit A, a-1.

The Mandate from the Supreme Court of Mississippi; affirmed, dated March 9, 1983, appears as Exhibit B, a-4.

JURISDICTION

The Judgment of the Supreme Court of Mississippi, of which review and reversal are sought, is the Judgment of the highest court of the state of Mississippi and a final Judgment within the meaning of the Jurisdictional statute. Jurisdiction is therefore, invoked under Title 28, United States Code, § 1257 (3).

Constitutional and Statutory Provisions Involved

(1) Article I, section 10 of the Constitution of the United States, provides, in part, as follows;

> "no state shall ...pass any ... law impairing the obligation of contract."

(2) Amendment XIV of the Constitution of the United States provides, in part, as follows:

> "...no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

(3) Amendment XIV of the Constitution of the United States further provides, in part, as follows:

> "...no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(4) United States Constitution, Amendment V in pertinent part, as follows:

> "No person shall...be deprived of life, liberty or property, without due process of law;..."

(5) Mississippi State Law: Mississippi Statute, Section 19-27-31 (Mississippi Code 1972) which states,

> "Chancellor may decree according to the merits of the case."

The Mississippi statute, 19-27-31, (Mississippi code, 1972), gives the right to vacate the land as long as it is not adversely affecting anybody else.

(5) Mississippi Constitution, Article 3, section 24, which states,

"All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay."

STATEMENT OF THE CASE

On Feb. 11, 1981, the Complainant, North American Finance Co. filed the "Complaint to Vacate Plat" of Pinehill Manor subdivision (R-1). On March 16, 1981, the Answer of Defendants was filed (R-34). This cause was heard April 1, 1981 on the Bill of Complaint to Vacate Plat and Defendants' Answer (R-42). The case was taken under advisement April 1, 1981, pending submission by both parties of proposed findings of fact and legal memoranda. (R-227). The Defendants' Proposed Findings of Fact and Defendants' Memorandum were dated May 5, 1981. The Complanant's Reply Brief was dated May 13, 1981(R-231).

On August 6, 1981, the Hon. Chancellor Fant signed for the decree to be issued in favor of the Complainant and filed the

Opinion of the Court on August 7, 1981 (R-240). On August 17, 1981, the Hon. Chancellor Fant wrote the Decree (R-247).

On September 1, 1981, C.B. Lampkin, Jr., Defendant, filed the "Petition for Appeal", in the Supreme Court of Mississippi, citing as error the decision by the Hon. Chancellor Fant ruling in favor of the Complainant on August 6, 1981.

On March 1, 1983 oral argument was presented by C.B. Lampkin, Jr. before the Supreme Court of Mississippi. On March 9, 1983, the Supreme Court of Mississippi erroneously affirmed the lower Chancery Court, Lafayette County, Mississippi. (See Exhibit B, page a-4 of Appendix).

REASONS FOR GRANTING THE WRIT

A. The decision of the Supreme Court of Mississippi essentially destroyed and impaired the obligation of contract (deed) between the parties in violation of Article I, section 10 of the Constitution of the United States.

By the state of Mississippi Supreme Court of Mississippi affirming the lower court --- there is a violation of Article I, section 10 of the Constitution of the United States because the Mississippi State Law: Mississippi Statute Section 19-27-31 (Mississippi Code 1972) which states,

> "Chancellor may decree according to the merits of the case." (Emphasis added.)

was not followed. In this instant case the Chancery Court failed to consider all the merits of the case and only decided on the basis of two issues which were stated on p. 5 of the "Opinion by Court" (page a-1).

"(1) To grant relief to the Complainant
(2) To deny the relief and leave the situation as it now is.";

however, the Hon. Chancellor Fant failed to consider the third alternative pointed out to him by the attorney for the Defendants. The third alternative was to grant the relief that the Complainant wanted but make any adjustment by compensation to the parties (Defendants) adversely affected. The Hon. Chancellor Fant should have considered all the merits in the case, but the Hon. Chancellor Fant failed to consider any merits of the Defendants. The Hon. Chancellor Fant failed to consider the issue of restrictions of the Defendants' property. In other words, the contract clause of the U.S. Constitution has been violated because the Supreme Court of Mississippi affirmed the lower court when the Chancellor Fant failed to follow the Mississippi statute 19-27-31, (Mississippi

Code, 1972) because he did not consider the merits of the entire case, and ignored the merits of the Defendants adversely affected by the restrictions.

The Mississippi statute, 19-27-31, (Mississippi, code, 1972), gives the right to vacate the land as long as it is not adversely affecting anybody else.

Secondly, the contract clause of the U.S. Constitution is violated when the Supreme Court of Mississippi affirmed the lower court when the Hon. Chancellor ignored the Mississippi Constitution, Article 3, section 24, by not considering the merits of the Defendants and the restrictions issue. See State v. McPhail, 182 M 360, 180 So 387 at 388, Supreme Court of Mississippi which states,

> "The constitutional provision that every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law refers to legal injury and means that it affords a judicial remedy for every unlawful violation of any one of the named rights." (Emphasis added.)

Petitioner contends that he has a sufficient stake in a judiciable controversy in order to obtain judicial resolution of the controversy. Sierra Club v. Morton, 405 U.S. 727 (1972). A controversy exist under Article I, Section 10 of the United States Constitution which provides that

> "no state shall ... pass any ...law impairing the obligation of contracts ..."

A Court decision which operates in the same manner as legislation to destroy valuable property rights gained under a contract is a violation of this provision of the Constitution. It has been held that a valid contract is property. Lynch v. United States, 292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934); North Texas Producers Association v. Young, 308 F. 2d 235 (5th Cir.) cert. denied, 83 S. Ct. 874, 372 U.S. 929, 9 L. Ed. 2d 733 (1962).

See Columbia Railway Gas & Electric Co. v. South Carolina, 261,U.S. 236, 43 S. Ct.

306, (1923) and Terre Hante & Indianapolis Railroad v. Indiana, 194 U.S. 579, 24 S. Ct. 767, 48 L. Ed. 1124 (1904) stand for the proposition that a state decision may, without specific reliance on a statute, by express implication give effect to a subsequent enacted statute and, thus, violate the Constitution. Marinella v. Shell Oil Company, 411 F. 2d 853 (3rd Cir. 1975).

B. The Fifth Amendment rights of the Petitioner have been ignored, which states,

> "No person shall... be deprived of life, liberty, or property, without due process of law..."

This means no court can ignore the rights of a citizen and deprive that citizen of property. The restrictions on the lots in the Pinehill subdivision are property rights. The restrictive covenants run with the land and are part of each deed issued in that subdivision. See Carolina Lane Co., Inc. v. Bland, 217 S.E. 2d 16 (1975) and Blue Ridge Realty Co., Inc. v. Williamson, 145 S.E. 2d

922, which states,

> "Where deed describes land as shown on specified plat, such plat becomes part of the deed."

Furthermore, the restrictive covenants are a part of the whole subdivision; part of the lots not sold as well as a part of the lots sold. Each lot has a right that runs with the land touching each other. (R-129).

The Supreme Court of Mississippi affirmed the lower court which did not consider the rights that run with the land and which are protected by this Fifth Amendment to the U.S. Constitution. This constitutional issue has been raised in the court below.

The Federal courts have said that under the Fifth Amendment to the United States Constitution rights incident to ownership cannot be divested by actions of the United States without due process of law. Northern Cheyenne Tribe v. Northern Cheyenne, 505 F. 2d 268, (9th Cir. 1974), Southwestern Petroleum Corp. v. Udall, 361 F. 2d 650

(10th Cir. 1966).

C. The Judgment of the Supreme Court of Mississippi deprives Petitioner of his property without Due Process of law in violation of the Fourteenth Amendment to the United States Constitution.

The restrictions in Pinehill subdivision were placed in it to run with the land, and every purchaser purchased a right in every other lot by being protected by the restrictions on those lots. The Supreme Court of Mississippi affirmed the lower court which ignored this Fourteenth Amendment to the U.S. Consitution and did not consider the Defendants's rights. (R-129).

The Defendants are protected by this Fourteenth Amendment to the U.S. Constitution and the Defendants claim for consideration and just settlement through compensation for damages was supposed to be upheld by this U.S. Constitutional Fourteenth Amendment. The fact the

lower court ignored the Defendant's rights running with the land and the merits in this case is a clear indication this case should be reversed.

The U.S. Constitution provides that,

> "nor shall any state deprive any person of life, liberty or property, without due process of law;..."

In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), Justice Jackson observed:

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause."

but the Court formulated a two-story process resolving alleged due process violation. First the court must determine whether the plaintiff is deprived of a protected interest. Second, the court must determine what process is due. Mullane, 339 U.S. at 309-311.

D. The Judgment of the Supreme Court of Mississippi is state action and deprives the Petitioner of the equal protection of the law.

The Equal Protection of the law, guranteed in the Fourteenth Amendment, also has been denied to petitioner by the decision of the Supreme Court of Mississippi. The application of state law by the Judiciary, even in a lawsuit between private parties, may constitute state action which must conform to the requirements of the Constitution. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964); Edwards v. Habib, 397 F. 2d 687 (D.C. Cir. 1968). This may be so even though the state is enforcing a Private Negotiated Contract. Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948); Hosey v. Club van Cartlandt, 229 F. Supp. 501, (S.D.N.Y. 1969).

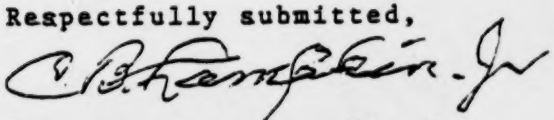
Equal protecion of the laws was violated when the restrictions were lifted from the lots vacated in the subdivision and not removed from the Petitioner's lots.

CONCLUSION

The Judgment of the Supreme Court of Mississippi violates Petitioner's contractural rights and should be reversed.

The Judgment of the Supreme Court of Mississippi also violates the Petitioner's rights under the 5th, and 14th Amendments to the U.S. Constitution, especially the Due Process and Equal Protection as stated above; therefore, the decision by the Supreme Court of Mississippi should be reversed. It is respectfully requested that the case be reviewed by this Court and reversed.

Respectfully submitted,



C.B. Lampkin, Jr., Pro Se
912 Chickasaw Road
Oxford, Mississippi 38655
234-4548

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day forwarded by United States mail the Petition for Writ of Certiorari to the Supreme Court of Mississippi (Mississippi no. 53,684) to the attorney of North American Finance Co., Mr. Edwin H. Roberts, Attorney, 1212 E. Van Buren, Oxford, Mississippi 38655.

THIS 14th day of June 1983.

By: C.B. Lampkin, Jr.

Exhibit A

"IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

NORTH AMERICAN FINANCE COMPANY,
VS.
UNIFIRST CORPORATION, ET AL.
COMPLAINANT
NO. A-9057
DEFENDANTS

D E C R E E

"THIS DAY this cause came on to be heard on a Bill of Complaint seeking to vacate a portion of the plat of the Pinehill Manor Subdivision pursuant to Section 19-27-31 of the Mississippi Code of 1972 Annotated.

"The Court after considering the pleadings, hearing the evidence and applying the appropriate law finds that the Complainant is entitled to the relief prayed for in the Bill and further incorporates into this Decree the findings of fact and conclusions of law set forth in the opinion of the Court on file in this matter.

"IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the following described property together with the roads and easements contained therein will be vacated from the Pinehill Manor Subdivision:

"Commence at the Southeast Corner of Section 33, Township 7 South, Range 3, West, Lafayette County, Mississippi; thence Westwardly along south line of said Section 33 a distance of 1320 feet to a point; thence Northwardly 437.5 feet to the point of beginning; said point being an iron pin by fence corner post at southeast corner of old Victor Baker property as recorded in Land Deed Book 244 at Page 109 in the Chancery Clerk's Office of Lafayette County, Mississippi;

"thence from point of beginning South 84° 52' West along wire fence line 1811 feet to an iron pin; thence North 10° 34" East 373 feet to a point; thence South 85° 20' West 175 feet to a point on the east line of Mississippi Highway 7; thence North 12° 23' East along said east line 750 feet to a point; thence Northwardly around a curve to the left whose radius is 1206.9 feet a distance of 194 feet to a point; thence North 84° 20' East 837 feet to the southeast corner of Lot 21 of Pinehill Manor Subdivision; thence North 10° 30' West 30 feet to a point in ditch; thence Northeastwardly with the meandering of said ditch 1270 feet to a point; thence South 5° 30' East 747 feet to a point; thence South 5° 40' East 1296 feet to the point of beginning and containing 63.5 acres more or less.

"IT IS, HOWEVER, EXPRESSLY PROVIDED that nothing contained in this Decree shall in any manner impair the full force and effect of any restrictive covenants running with the land, but that all such covenants remain of the same force and effect, as if this Decree had not been entered.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk be empowered and he is directed to enter a copy of this Decree on the land records of Lafayette County. He is further directed to note on said plat of Pinehill Manor Subdivision that the above described portion has been vacated therefrom. The Clerk is further authorized to record a copy of the survey and plat of the above described 63.5 acres in said land records.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants be taxed with all costs in this matter.

ORDERED, ADJUDGED AND DECREED, this the 17th day of August, 1981.

s/ T. Glen Fant, Jr.
CHANCELLOR

"MANDATE FROM THE SUPREME COURT OF MISSISSIPPI

To the Chancery Court of Lafayette County - Greetings:

"WHEREAS, on the 9th day of March, 1983, the same being a day of the regular term of the Mississippi Supreme Court, begun and held in the Courtroom, in the Gartin Building, in the City of Jackson, Mississippi, on the 1st Monday of March, in the year of our Lord, 1983, the following final decree was rendered by the Mississippi Supreme Court, to-wit:

C.B. LAMPKIN, JR.
No. 53,684
vs.
NORTH AMERICAN FINANCE COMPANY

"This cause having been submitted at a former day of this Term on the record herein from the Chancery Court of Lafayette County and this Court have sufficiently examined and considered the same and being of the opinion that there is no error therein doth order, adjudge and decree that the Decree of said Chancery Court rendered in this cause on the 17th day of August, 1981, be and the same is hereby affirmed. It is further ordered, adjudged and decreed that the appellant to pay all of the costs of this appeal to be taxed for which let proper process issue.

"YOU ARE THEREFORE HEREBY COMMANDED, that such execution and further proceedings be had in said cause, as according to right and justice, and the judgment of our SUPREME COURT and the law of the land ought to be had.

"WITNESS, the Hon. Neville Patterson, Chief Justice of the Mississippi Supreme Court; also the signature of the Clerk and the Seal of said Court hereunto affixed, at office in the City of Jackson, this 25th day of March, A.D., 1983.

s/ Robert E. Womack, Clerk"